

March 5, 2009

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

*Re: Petitions for Declaratory Ruling Regarding Public, Educational and Governmental Access Channels, MB Docket No. 09-13, CSR-8126 (ACM et al.) and CSR-8127 (City of Lansing, MI.)*

Dear Ms. Dortch:

The City of San José supports and strongly urges the Commission to grant both of the above-captioned petitions concerning public, educational and governmental (“PEG”) access channels. The problems created by the AT&T channel platform are different in many respects. The company is using its editorial control over their system to make it more difficult for program producers to use, and for subscribers to access and watch PEG programming. Rather than repeat the legal arguments in the petitions, the City submits these comments to explain PEG’s role in our community, and why it is important to prevent operators from inhibiting access to these channels

PEG Programming in San José

The City of San José is the tenth largest city in the United States and the third largest city in California. The City, along with *CreaTV San Jose*, an independent nonprofit organization, and a consortium of local community colleges provide 4 PEG channels to residents of San José. Working together, our organizations provide vital, inherently local programming that is not available from any other source. The programming offers a great variety of subjects, some of which include: City Council meetings directly affecting the lives of our residents; information about City programs and services that promote activities available at our Community Centers and Libraries for residents from at-risk youth to disabled seniors; information from human service, arts and cultural agencies and programming in both Vietnamese and Spanish for our diverse population.

All programming on the governmental and educational channels is closed-captioned. This is of vital importance to many within the deaf and English as a second language communities. Per the California Chancellor’s Office, closed captioning is mandatory for all content being produced by educational institutions and aired on educational channels. In a stagnant economy, it is more important than ever that residents are able to connect with services available in their community. For an example of just some of this programming, please visit: [http://sanjose.granicus.com/ViewPublisher.php?view\\_id=2](http://sanjose.granicus.com/ViewPublisher.php?view_id=2).

PEG programming, which is currently cablecast to 170,000 households in San José on Comcast cable, provides local residents with informational, public safety, educational, cultural and local opinion programming of uniquely local interest that they cannot obtain elsewhere. Our public channel alone airs seventy-five hours of original programming each week including content by and for members of our Vietnamese, Native American, Assyrian, Arabic, African American and Latino communities.

#### The Situation in Our Community

AT&T has been offering its *U-Verse* product to residents of San José since 2007. However, for PEG channels only, AT&T does not provide user-selectable closed captioning, DVR recording, or unattended VCR recording. In addition, AT&T's choice of placement and transmission technology makes PEG channels difficult to find and provides a fundamental lack of image quality. As a result, no City, educational or nonprofit entity in San José is willing to provide AT&T with a signal, knowing that quality, functionality and channel location would be so dramatically affected.

We rely upon our PEG channels to convey important public information in San José. If the channels are less accessible for technical reasons, or more difficult to find, the PEG channels would become a much less effective avenue for community communications, and some subscribers we now reach would not receive the information at all. We now face the very real problems caused by the AT&T *U-Verse* platform that are described in detail in petition CSR-8126, CSR-8127. If the Commission were to deny petitioners' requests for relief in those matters, the City has little doubt that AT&T will let stand those approaches which largely marginalize or effectively eliminate PEG access. Furthermore, if AT&T is allowed to continue to operate in this substandard manner, it is logical to presume that other traditional cable operators might contend that they also should be allowed to reduce PEG channel functionality, quality and placement under a "level playing field" argument.

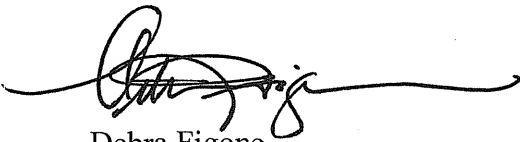
#### The Commission Should Grant the Petitions Concerning AT&T's PEG Product (CSR-8126, CSR-8127).

Our experience confirms many of the deficiencies identified in the petitions. In virtually every conceivable way that matters to a viewer, the AT&T PEG product is markedly inferior to broadcast channels carried on AT&T's *U-verse* system. Issues include: ease of finding PEG channels in the menu system; ease of accessing PEG channels; the time it takes to reach the PEG programming; the ability to switch back and forth between local PEG programming and other channels; the ability to record using DVR or an unattended VCR; closed captioning capability; and secondary audio ("SAP") capability which allows for simultaneous broadcast of multiple languages. Tests by City staff of both the historical and currently available *U-Verse* system confirm that these fundamental problems persist, despite AT&T's claims that it has made improvements to its product and concessions to community needs. Accordingly, to preserve PEG as envisioned in the Cable Act, the Commission should grant the petitions in CSR-8126, and CSR-8127.

Conclusion

PEG channels in San José are a critical and irreplaceable resource for the community. They are the key medium of communication for our local government to communicate with residents, for local educational institutions to communicate with K-12, higher education, continuing-education and vocational students, and for residents to communicate among themselves while participating in a dialogue about our community. In light of the decreasing amount of truly local programming available on broadcast and other commercial channels, PEG is the only full-time, genuinely local source of television programming available to our residents. We therefore strongly urge the Commission to grant both petitions.

Respectfully submitted,



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**PROOF OF SERVICE**

PETITION NAME: Entities File Petitions for Declaratory Ruling Regarding Public, Educational, and Governmental Programming

CASE IDENTIFIER: CSR-8126, CSR-8127 & CSR-8128

MB DOCKET NO.: 09-13

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

On March 5, 2009, I caused to be served the within:

**CITY OF SAN JOSE'S COMMENTS TO PETITIONS FOR DECLARATORY RULING  
REGARDING PUBLIC, EDUCATIONAL, AND GOVERNMENTAL PROGRAMMING  
(MB DOCKET NO. 09-13)**

☒ by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

☒ by E-MAIL, with a copy of this declaration, by causing to be delivered an electronic copy thereof to the person at the e-mail address set forth below.

Addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 5, 2009, at San Jose, California.

  
CECILIA McDANIEL